

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Court File No. \_\_\_\_\_

James D. Sauer,

Plaintiff,

v.

**COMPLAINT**

Bernatello's Pizza, Inc.,

Defendant.

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Plaintiff, for his cause of action against Defendant, alleges:

1. This Court has original jurisdiction of this action under 28 U.S.C. § 1331 and the Family Medical Leave Act, 29 U.S.C. § 2617(a)(2).
2. Plaintiff, James D. Sauer, is an individual residing at 54071 - 244<sup>th</sup> Street, Austin, Minnesota 55912. Plaintiff has resided at such address at all times relevant to the allegations herein.
3. Defendant, Bernatello's Pizza, Inc., is a Minnesota corporation having its principal offices at 220 Congress Jude Industrial Park, Maple Lake, Minnesota 55358.
4. Defendant manufactures and sells a variety of food products in interstate commerce, and was engaged in such business at all times relative to the allegations herein.
5. Defendant employed 50 or more employees for each working day during each of 20 or more calendar workweeks in 2007, and has employed 50 or more employees at all times since 2007.

6. Plaintiff became an employee of Defendant on November 7, 2005. Plaintiff was employed as a sales representative, which involved driving a delivery truck on a sales route in southern Minnesota. Plaintiff's duties also included loading and unloading the delivery truck, soliciting customer orders, and filling orders. Defendant paid Plaintiff \$100 per week plus commission. Defendant continuously employed Plaintiff as a sales representative from November 7, 2005, until Defendant terminated Plaintiff's employment on January 22, 2008.

7. At the end of his workday on January 7, 2008, Plaintiff suffered a serious health condition which resulted in his hospitalization and placement on a medical leave of absence from his employment with Defendant. The leave of absence began on January 8, 2008.

8. Plaintiff returned to work for Defendant on Monday, January 21, 2008. Shortly after returning to work on that day, Plaintiff suffered a reoccurrence of the symptoms of his serious health condition which again rendered him unable to perform his employment duties for Defendant. Consequently, Plaintiff requested addition medical leave, to begin immediately.

9. On January 22, 2008, while Plaintiff was still on medical leave, Defendant terminated Plaintiff's employment with Defendant.

**COUNT I**

**UNLAWFUL TERMINATION OF EMPLOYMENT AND DENIAL OF FMLA RIGHTS**

**29 U.S.C. § 2612, 29 U.S.C. § 2614(a)(1), and 29 U.S.C. § 2615(a)(1)**

10. Plaintiff realleges paragraphs 1 through 9 above.

11. Plaintiff was entitled to a leave of absence from his employment with Defendant because of a serious health condition that made Plaintiff unable to perform the functions of his position, pursuant to the Family Medical Leave Act, 29 U.S.C. § 2612(a)(1)(D).

12. Defendant terminated Plaintiff's employment in violation of the Family Medical Leave Act, 29 U.S.C. § 2612(a)(1)(D), 29 U.S.C. § 2614(a)(1), and 29 U.S.C. § 2615(a)(1).

13. As a result of Defendant's unlawful termination of Plaintiff's employment, Plaintiff has suffered damages including but not limited to lost wages, commission, and benefits, in a total amount in excess of \$50,000.

## **COUNT II**

### **UNLAWFUL TERMINATION OF HEALTH BENEFITS**

#### **29 U.S.C. § 2614(a)(2) and 29 U.S.C. § 2614(c)(1)**

14. Plaintiff realleges paragraphs 1 through 13 above.

15. Defendant terminated Plaintiff's group health insurance coverage under Defendant's Group Benefits Plan effective on January 8, 2009, which was the first day of Plaintiff's initial leave of absence as a result of his serious health condition and hospitalization. Attached to this Complaint as Exhibit A is a copy of the termination notice or "COBRA notice" dated February 6, 2008, wherein Defendant notified Plaintiff that Plaintiff's group health insurance coverage was terminated as of January 8, 2008.

16. Defendant's termination of Plaintiff's group health insurance coverage as of January 8, 2009, was in violation of the Family Medical Leave Act, 29 U.S.C. § 2614(a)(2) and 29 U.S.C. § 2614(c)(1), which required Defendant to maintain Plaintiff's coverage under any group

health plan for the duration of his leave of absence at the level and under the conditions coverage would have been provided if Plaintiff had continued in employment continuously for the duration of such leave.

17. As a result of Defendant's unlawful termination of Plaintiff's group health insurance coverage, Plaintiff incurred monetary damages of \$1,011.19 in the form of health insurance premiums paid to maintain coverage under COBRA and obtain replacement coverage.

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

1. With respect to Count I, awarding Plaintiff damages in an amount in excess of \$50,000, plus interest at the prevailing rate.
2. With respect to Count I, awarding Plaintiff liquidated damages equal to the amount of Plaintiff's actual damages plus interest.
3. With respect to Count II, awarding Plaintiff damages in the amount of \$1,011.19, plus interest at the prevailing rate.
4. With respect to all Counts, awarding Plaintiff his attorney's fees, expert witness fees, and other costs incurred in this action.
5. Awarding Plaintiff any other costs and disbursements incurred in this action.
6. Ordering such other relief as the Court deems just and equitable.

**PLAINTIFF DEMANDS A JURY TRIAL PURSUANT TO FRCP 38.**

Date: June 16, 2009

BAUDLER BAUDLER MAUS & BLAHNIK, LLP

By:

  
Jeffrey M. Kritzer  
Attorney Reg. No. 277447  
Attorneys for Plaintiff  
108 North Main Street  
Austin, Minnesota 55912  
Telephone: 507-433-2393  
Fax: 507-433-9530

BERNATELLO'S PIZZA, INC.  
C/O ADMINISTRATION RESOURCES  
PO BOX 367  
ANOKA, MN 55303

February 06, 2008

Mr. James Sauer  
Ms. Jean Sauer  
54071 244th Street  
Austin, MN 55912

Dear Mr. Sauer:

You are receiving this notice because you and any eligible dependents were covered under the Group Benefits Plan for BERNATELLO'S PIZZA, INC.. Federal and/or State Continuation laws allow you to continue these benefits for a period of up to 18 MONTHS from the Qualifying Event Date of 01/07/2008. Your coverage can commence on 01/08/2008, the first day after your coverage from the active group benefits ends due to TERMINATION and could continue until midnight on 07/07/2009 if timely payments are received. If you or qualified dependents were disabled at the time of your Qualifying Event Date, or become disabled within sixty days of that date, you may be eligible for an extension of coverage.

If you and/or your dependents would like to continue these benefits, please complete the enclosed Group Benefits Continuation Plan Enrollment Form and return it to the address stated on the form, prior to the end of the 60 day election period and postmarked no later than 04/06/2008.

Coverage will not be reinstated until we receive the enclosed completed Group Benefits Continuation Plan Enrollment Form along with your initial premium payment. To ensure a more timely reinstatement of your coverage, do not mail your initial payment separately.

You are allowed to delay the initial premium payment for up to forty-five days after you have signed, dated and submitted your Group Benefits Continuation Plan Enrollment Form. Please be aware that premiums are due from the beginning of your coverage period regardless if you have incurred claims. As previously stated, coverage will not be reinstated until payment is received.

Important Notice: Your coverage begins on 01/08/2008. If this date is any day other than the first of a month, there will be a prorated premium amount due for the first partial month. Please see the enclosed Group Benefits Continuation Plan Enrollment Form page for premium payment amounts.

Upon receipt of your completed Group Benefits Continuation Plan Enrollment Form, as a courtesy, ARC will provide coupons to assist you in making timely payments. Regardless if coupons are utilized, future payments are due the first of each month thereafter, and should be mailed on or before the due date. Failure to pay premiums by the end of the 30-day grace period will terminate your participation in the Group Benefits Continuation Plan.

If you have questions, please contact our office during regular business hours at 763-421-5510 or 800-588-2020.

Sincerely

JILL, ext. 2242  
ACCOUNT MANAGER

Para traducciones del material adjunto, favor de comunicarse al 1-800-588-2020.

